

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 23-99

Date Received: May 24, 2023

Title: Deletion and Transfer of Commercial Licensing Agreements

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Policy and Guidance: (Please check only one box)

- | | |
|---|--|
| <input type="checkbox"/> Policy | <input type="checkbox"/> Procurement Tools and Resources |
| <input checked="" type="checkbox"/> Guidance | <input type="checkbox"/> Real Property Templates and Samples |
| <input type="checkbox"/> Procurement Samples | <input type="checkbox"/> Procurement Clauses |
| <input type="checkbox"/> Procurement Templates | <input type="checkbox"/> Real Property Clauses |
| <input type="checkbox"/> Procurement Forms | <input type="checkbox"/> Other Tools and Resources |
| <input type="checkbox"/> Procurement Checklists | |

Summary of Change:

Guidance Section T3.16 is deleted in its entirety and marked as reserved. The content related to Commercial Licensing Agreements has been transferred to T3.8.9.

Reason for Change:

The purpose of the deletion and transfer of Section T3.16 to T3.8.9 is part of an effort to consolidate matters related to Information Communication Technology (ICT) into a single AMS Section (T3.8.9). The language of what was previously T3.16 is updated and is now located at T3.8.9B.1, Commercial Software Licensing Agreements.

Development, Review, and Concurrence: AAP-110

Target Audience: FAA Acquisition Workforce

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

AMS Procurement Policy & Guidance - Procurement Guidance - T3.16

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links: <https://fast.faa.gov/docs/procurementGuidance/guidanceT3.16.pdf>

Attachments: Redline and final documents.

Other Files: N/A.

Redline(s):

Section Revised: T3.16 – Reserved

Procurement Guidance - (4/2023/7/2023)

[T3.16 Commercial Licensing Agreement](#)~~Reserved~~ Added 4/2006 Revised 7/2023

~~[A Commercial Licensing Agreement](#)~~ Revised 9/2021

~~[B Clauses](#)~~ Added 4/2006

~~[C Procurement Forms](#)~~ Revised 9/2021

~~[D Procurement Samples](#)~~ Added 9/2021

~~[E Procurement Templates](#)~~ Added 9/2021

~~[F Procurement Tools and Resources](#)~~ Added 9/2021

~~[G Appendix](#)~~ Revised 9/2021

T3.16 ~~Commercial Licensing Agreement~~Reserved Added 4/2006Revised 7/2023

~~A Commercial Licensing Agreement~~ Revised 9/2021

- ~~1. Commercial Licensing Agreements (agreements) provide terms and conditions for the FAA to use various commercial software programs that the Government does not own. Often there are embedded terms in the agreements that could create legal problems for the FAA or the agreements may provide terms that conflict with other contract provisions. These conflicts also have potential to create legal problems, and both issues could cause unexpected liabilities.~~
- ~~2. The Contracting Officer (CO) should use the attached Appendix G "Checklist For Review of Commercial Form Contracts" (software licenses, etc.) to examine pertinent clauses and agreement requirements to prevent unfavorable terms or conflict with FAA contracts.~~
- ~~3. Only the CO is authorized to enter into Commercial Licensing Agreements.~~
- ~~4. The CO must consult with legal counsel to ensure that agreement terms and conditions minimize FAA's liability, and strike a balance between the FAA's requirements needs and the contractor's proprietary interest.~~

~~B Clauses~~ Added 4/2006

[view contract clauses](#)

~~C Procurement Forms~~ Revised 9/2021

Document Name

~~D Procurement Samples~~ Added 9/2021

Document Name

C:\webroot\docs\fast\PPG_Procurement_Guidance.cfm

~~E Procurement Templates~~ Added 9/2021

Document Name

F Procurement Tools and Resources Added 9/2021

Document Name

G Appendix Revised 9/2021

Checklist for Review of Commercial Form Contracts (Software licenses, etc.)

- ~~1. Review AMS clause 3.5-18, "Commercial Computer Software Restricted Rights," which either is, or should be added into, the basic contract. Delete all clauses and terms inconsistent with AMS, e.g., "breach," "payment," "termination," "binding arbitration."~~
- ~~2. Delete any "Governing Law" provision unless it specifies Federal law; e.g., "This agreement must be subject to the laws of the state of Michigan."~~
- ~~3. Scrutinize the document for any attempts to impose additional license fees, i.e., if the software is to be used by anyone in the FAA not specifically identified in the agreement or contract.~~
- ~~4. Check for clauses that attempt to restrict use of the software to specific machines or networks in specific locations. Delete as necessary.~~
- ~~5. Delete any and all indemnity or attorney's fees provisions in contractor's favor. See Anti-Deficiency and Equal Access to Justice Acts, respectively.~~
- ~~6. Delete integration or merger clauses; the FAA contract will govern the rights and responsibilities of the parties, not a stand-alone license agreement.~~
- ~~7. Avoid open items (e.g., form blanks not filled in); these items must be negotiated and recorded prior to execution.~~ 2023
- ~~8. No incorporation of future prices, terms, etc. (For example, software licenses cannot automatically renew each year if the FAA will become obligated to pay a yearly licensing fee.)~~
- ~~9. Delete any interest for late payment terms varying from the Prompt Payment Act.~~
- ~~10. Eliminate extensive warranty disclaimers, particularly disclaimers for defects in "third party products," where a subcontractor or supplier provides input into the final contract deliverable.~~

~~11. Watch for and delete clauses that give the contractor exclusive control over infringement litigation. The Department of Justice would represent FAA in any such litigation, and expect a certain amount of control.~~

~~12. Delete damages and/or liability clauses which are inconsistent with FAA clauses.~~

~~13. Delete injunctive release terms that could arbitrarily stop performance.~~

~~14. Ensure that the FAA use of copyrighted material will not be considered an infringement of the copyright.~~